

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 10757 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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RANJIT CHATRAKHUJ JASANI - Petitioner(s)
Versus
DHANESHREE S TALWALKAR & 5 - Respondent(s)

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Appearance :

MR SK PATEL for Petitioner(s) : 1, MR.DIPAK B PATEL for
Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1 - 3, 5,
MR SB VAKIL for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 4,
GOVERNMENT PLEADER for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/01/2007

ORAL JUDGMENT

1. By this writ application, the petitioner seeks to challenge
order dtd.30.9.1993 / 4.10.1993 passed by the Secretary

(Appeals), where-under, he had confirmed the order passed by the Collector, Kutch.

2. Short facts necessary for disposal of the present writ application are that the petitioner has submitted that the land bearing Survey No.277 belonged to his father, his father had executed a registered Gift Deed on 16/5/1953 in favour of the Government and the land bearing Survey No.277 vested in the Government vide Mutation Entry No.47 dtd.20/3/1960. The case of the petitioner so also of the State Government, is that the Government came in possession of the said land on 20/3/1960. It is stated by the State Government that the actual record pertaining to handing over of the possession of the land bearing Old Survey No.277 is not available with Collector's office, Mamlatdar's office or even the Deputy Executive Engineer's (Panchayat) office. According to them, from uncertified copy of the Panch Rojkam dtd.29/1/1976, possession of the land appears to have been handed over to the petitioner - Ranjit Chatrabhuj Jasani on 29/1/1976. In the same breath, the Government says that the said land was given back to one Ishvar Ramji Gurukul Vandhay Trust (Predecessor of Gnana Vistarak Sangh) on 20/3/1967, in pursuance of the Resolution

No.N/AGS/2766/12/84/R dtd.18/4/1966. It is also the say of the State Government that Mutation Entry No.80 dtd.20/3/1967 mentions that the land bearing Survey No.277 was given back to the said Ishvar Ramji Gurukul Vandhay Trust, but the Government says that no other orders are available. In para 4(a) of the Affidavit dtd.10/1/2007 by Collector, Kutch, it is mentioned that they do not have any records or correspondence to suggests that the State had, at any time, prior to 1966 taken the possession of the land in dispute from Ishvar Ramji Gurukul Vandhay Trust.

3. The private respondents submit that they were recorded owners of the property and the possession of the land was handed over to them. At the same time, learned counsel for the petitioner submits that from the Gift Deed of 1953, it would clearly appear that the land belonged to the petitioner's father and the possession was handed over to the petitioner in the year 1976. Mr.Pujari, learned Assistant Government Pleader submits that he is unable to consile various statements made in the affidavit of the Collector, Kutch. During the course of hearing, I inquired from the parties that in absence of the documents or proper inquiry by the Collector, how could orders be

made in favour of the private respondents or the said Ishvar Ramji Gurukul Vandhay Trust, the parties agreed that the impugned orders passed by the Secretary and the Collector be set aside with a direction to the Collector to make an inquiry into the title of the parties. I suggested to them that as the rights of the parties are yet not crystalised, the private respondents should not enjoy the possession of the property to which, Mr.Clerk, learned counsel for the private respondents submits that the Collector may be authorised to take possession of land bearing Survey No.277 and keep it at the disposal of some Commissioner, so that the party, who ultimately succeeds, may get usufruct and the possession of the property. Learned counsel for the petitioner does not oppose the suggestion.

4. The petition is disposed of with the following directions;

- (i) The order passed by the Collector on 8/8/1980 and the order dtd.30.9.1993 / 4/10/1993 passed by the Secretary (Appeals) are hereby set aside.
- (ii)The petitioner and the private respondents shall appear before the Collector, Kutch on 19/2/2007 with a copy of this order, enabling the Collector to know that what is

required to do. It is, however, made clear that no further notice to the petitioner or to the private respondents would be necessary.

(iii) After receiving copy of this order, the Collector shall allow the parties to file their claims. He, thereafter, shall allow the parties to file their written statement and counter claims. After the said process is over, he shall make an inquiry that the property belonged to which of the party prior to 1953 and whether in the year 1953, the petitioner's father had executed a registered Gift Deed in favour of the State Government and the possession of the property was given back by the State Government to the petitioner namely Ranjit Chatrabhuj Jasani on 29/1/1976 or whether the property, prior to 1953, was ever belonged to Ishvar Ramji Gurukul Vandhay Trust, and at any point of time subsequent to 1953, they handed over the possession of land bearing Survey No.277 to the State Government and whether the State ever received the possession of the said Survey No.277 from said Trust. He shall also make an inquiry into the fact that whether the other Survey Numbers namely Survey Nos.270, 271, 272, 273, 275 and 276 belonged to said Trust and whether the possession of the said land was ever taken over by the

State Government from the said respondent – Trust and whether the possession of the said land was ordered to be returned in favour of said Trust. He shall also make an inquiry into the fact that while making an order for return of Survey Nos.270 to 273, 275 and 277 , whether order in relation to Survey No.277 came to be made and whether there was any mistake in the order passed by the Government in returning the possession to the private respondents.

(iv)After giving proper opportunities to the parties to lead oral evidence and produce documentary evidence, the Collector himself shall decide the matter by a speaking order in accordance with law, preferably within a period of one year from the date of appearance of the parties.

5. The petition is disposed of accordingly. No costs.

(R.S. GARG, J.)

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